

83RD GENERAL ASSEMBLY

REGULAR SESSION

April 30, 1984

PRESIDING OFFICER: (SENATOR HALL)

The hour of twelve having arrived, the Senate will come to order. Our Chaplain for today will be Senator Rupp. Would our guests in the stands please rise and will the members be at their desks.

SENATOR RUPP:

Thank you, Mr. President.

(Prayer given by Senator Rupp)

PRESIDING OFFICER: (SENATOR HALL)

Thank you. Reading of the Journal. Senator Luft.

SENATOR LUFT:

Mr. President, I move that reading and approval of the Journals of Tuesday, April 24th; Wednesday, April 25th and Thursday, April 26th, in the year 1984, be postponed pending arrival of the printed Journals.

PRESIDING OFFICER: (SENATOR HALL)

You've heard the motion. All in favor Aye. Opposed No. Motion is carried. Messages from the House.

SECRETARY:

Message from the House by Mr. O'Brien, Clerk.

Mr. President - I am directed to inform the Senate the House of Representatives has passed the following bills, with the following titles, in the passage of which I am instructed to ask concurrence of the Senate, to-wit:

House Bills 1427, 1757, 2355, 2360, 2365, 2389, 2395, 2396, 2398, 2452, 2461, 2463, 2469, 2488, 2489, 2491, 2502, 2513, 2515, 2519, 2534, 2591, 2600, 2605, 2633, 2635, 2647, 2650, 2665 and 2689.

PRESIDING OFFICER: (SENATOR HALL)

Because of the climatic conditions that some of the planes haven't been able to get in yet, so the Senate will stand at ease until one o'clock.

PRESIDENT:

The Senate will come to order. Resolutions, Mr. Secre-

tary.

SECRETARY:

Senate Resolution 573 offered by Senator Sangmeister, it's congratulatory.

Senate Resolution 574 offered by Senator Lemke, and it's congratulatory.

PRESIDENT:

Consent Calendar. With leave of the Body, we'll move to page 6 on the Calendar on the Order of House Bills 1st Reading. Mr. Secretary.

SECRETARY:

House Bill 876, Senator Holmberg is the Senate sponsor.

(Secretary reads title of bill)

House Bill 1128, Senator Bloom.

(Secretary reads title of bill)

House Bill 2346, Senator Degman.

(Secretary reads title of bill)

House Bill 2374, Senator Vadalabene.

(Secretary reads title of bill)

House Bill 2466, Senators Berman and Eloom.

(Secretary reads title of bill)

House Bill 2468, Senator Donahue.

(Secretary reads title of bill)

House Bill 2669, Senators Mahar and Sangmeister.

(Secretary reads title of bill)

1st reading of the bills.

PRESIDENT:

Rules Committee...Senator Schaffer, for what purpose do you arise?

SENATOR SCHAFFER:

Mr. President, for the purpose of requesting leave to waive the Six-day Notification requirement to hear Senate Bill 1381 in Executive. We've transferred that from Ag. to Executive and I just want to make sure we get it heard tomor-

row since I think that will be the last chance.

PRESIDENT:

Alright. The gentleman requests leave to waive the Six-day Posting requirement with respect to Senate Bill 1381. Is leave granted? Leave is granted. So ordered. Senator Lemke, for what purpose do you arise?

SENATOR LEMKE:

Purpose of making an announcement to waive the Six-day Notice provisions on three bills that failed to get on the notice: Senate Bill 1925, Senate Bill 1928 and Senate Bill 1957. I think that's Senator DeAngelis' bill, Senator Bloom's and Senator Bruce's. I ask for leave.

PRESIDENT:

Alright. Senator Lemke has requested leave to waive the Six-day Posting requirement so that Senate Bills 1925, 1928 and 1957 can be heard in Judiciary I on Tuesday, May 1st. Is leave granted? Leave is granted. So ordered. Senator Marovitz, for what purpose do you arise?

SENATOR MAROVITZ:

Purpose of an announcement, if it would be in order, Mr. President. The Calendar does not reflect the Senate Committee on Government Reorganization...it...tomorrow's Calendar will reflect same. That meeting will be held on Thursday, at ten o'clock, in Room 400 at the Capitol. Senate Committee on Government Reorganization, Thursday, 10:00 a.m., Room 400.

PRESIDENT:

If I can have your attention, WCIA-T.V. has requested permission to videotape the...the proceedings. Is leave granted? Leave is granted. Also, Mr. Gene Holmberg is up in the President's Gallery and has requested permission to take pictures of Senator Holmberg and perhaps Senator Bloom if he's...is leave granted? Leave is granted. Senator Carroll. With leave of the Body, we'll move to page 5 on the Calendar on the Order of House Bills 3rd Reading. There is a supple-

mental of some emergency. On the Order of House Bills 3rd Reading is House Bill 2353. Read the bill, Mr. Secretary.

SECRETARY:

House Bill 2353.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDENT:

Senator Carroll.

SENATOR CARROLL:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. This is a supplemental appropriations of the State Treasurer. While we have abolished the State Inheritance Tax there is still the collection of those when the taxes were valid and they...because the taxes had been greater than anticipated, there is not sufficient money in the appropriated account to pay the portion that goes back to the County Treasurer, in addition to which we had added some monies necessary for the Mature Bond and Coupon Fund. This is also a fund where those entitled to receive the income make an application to the State Treasurer. There have been more applications than we had budgeted and, therefore, the State Treasurer needs these funds by the end of working business today in order to make the payments in a timely fashion, and I would ask for a successful passage of House Bill 2353.

PRESIDENT:

Is there any discussion? Any discussion? If not, the question, is shall House Bill 2353 pass. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 51, the Nays are none, none voting Present. House Bill 2353 having received the required constitutional majority is declared passed. Senator Bloom, for what purpose do you arise?

SJR 98
Constitutional Amend.
3rd reading

SENATOR BLOOM:

Yeah, if we could go to the Order of Constitutional Amendment 3rd Reading.

PRESIDENT:

Alright. The gentleman has asked leave to go to the Order of Constitutional Amendment on 3rd Reading at page 7. Is leave granted? Leave is granted. On the Order of Constitutional Amendments 3rd Reading, Senate Joint Resolution 98. Mr. Secretary, read the resolution a third time.

SECRETARY:

Senate...Senate Joint Resolution 98 Constitutional Amendment.

(Secretary reads SJR 98 CA)

3rd reading, Senate Joint Resolution 98 Constitutional Amendment.

PRESIDENT:

Senator Bloom.

SENATOR BLOOM:

Well, thank you, Mr. President and fellow Senators. I'm sure almost everyone in this Chamber has been contacted by a representative of their unit of local government or a school district in their Senate area. This addresses a recurring problem that we thought we had taken care of statutorily in 1981. Essentially...

PRESIDENT:

Wait,...pardon me Senator. Will the Senate come to order.

SENATOR BLOOM:

...yeah.

PRESIDENT:

Senator Bloom.

SENATOR BLOOM:

...essentially what we would do by virtue of this is to send the proposal over to the House with some dispatch where the House sponsor awaits it to take some speedy action. What

we are trying to do is in an evenhanded way try to exercise our supervisory authority over nonhome rule units, while at the same time not falling back into the error that appeared in the late seventies of involving ourselves in too much of the detail of the day-to-day operations of both our school districts and our units of local government. I'd be glad to answer any questions anyone might have; otherwise, I would urge a favorable roll call and send this over to the House as speedily as possible. Thank you, very much.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Any discussion? Senator Netsch.

SENATOR NETSCH:

Thank you, Mr. President. I rise in opposition to Senate Joint Resolution 98, and it looks for the moment as if I may be the only one so doing, but I...I really wish we'd stop and take a look at this and perhaps reflect on its implications. It is a very dramatic proposed Constitutional Amendment which I think is going to affect a great deal more...excuse me, than...than...than perhaps some of the membership realizes. In the...at the outset I would say that I think as a matter of policy it is a very bad idea to enact something like this out of what I recognize is a genuine sense of frustration. Admittedly, the Legislature should not be passing terribly costly bills, the burden of which is passed on to local governments. Admittedly, it was the reason to avoid that that we passed the State...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright, just a...Senator Netsch, pardon me just a moment. Ladies and Gentlemen, if we could keep the noise level down. Senator Netsch.

SENATOR NETSCH:

...admittedly, it was to protect us from doing that that we passed the State mandate's legislation several years ago; and admittedly, we have found ways to get around and avoid

and evade the State mandate's legislation, at least in the last year Session in 1983. For the first Session, actually, we were fairly good in living up to the spirit of that State mandate's legislation, but I would suggest to members of the Legislature that if we were to propose a Constitutional Amendment to require an extraordinary vote of both Houses of the Legislature, every time the Legislature did not perform exactly the way some or even all of us thought it should, we would end up with a requirement for a three-fifths vote for virtually every piece of legislation that we enact. And while some may consider that a blessing, it certainly is not consistent with the Democratic process and majority rule. So I would say at the outset, it is a very bad policy to express our frustration in terms of requiring...of changing the Constitution to require an extraordinary vote, and I am reasonably sure that we will live to regret it...beyond that, we will probably find ways to evade it if it becomes necessary to do so, and I would just remind members again of some of the restrictions that existed in the old 1870 Constitution; for example, the limitation on the amount of debt that could be issued by the State Legislature. As I recall, the figure was two hundred and fifty thousand dollars unless the matter were submitted to referendum. At the time we rewrote the Constitution the State had outstanding...as I recall, approximately 1.9 billion dollars of debt despite that constitutional provision. So that if there is a reason, whether good or bad, to evade, we will find a way to do it. Our inventiveness in that respect knows no bounds. The...the other thing I would suggest to you is that if you look at the language of this bill, the first sentence at least, as I read it...of the proposed amendment, I should say, "A bill which would require the expenditure by a unit of local government or a school district of funds in order to implement that bill shall not pass then without the three-fifths vote require-

ment." I think that covers an enormous amount of legislation, not just obvious things. For example, if...I suppose if we make a change in the unemployment compensation laws, it would now require a three-fifths vote, because...local governments pay unemployment compensation, and so they would be subject to that. But it seems to me almost anything we do whether it's a Freedom of Information Act, an Open Meeting's Act, anything is going to require a three-fifths vote if it has any reach at all to local governments, because that language is broad enough to embrace any bill that requires any expenditure of any amount of money by a unit of local government or a school district. I think as a practical matter we are indeed setting up a condition whereby we, the Legislature, are going to have to achieve a three-fifths vote majority on a vast amount of legislation. And I would suggest to you, I think we will come to regret it if indeed we do enact...propose this amendment and it is adopted by the voters. It seems to me it is bad both in a pragmatic sense and it is bad as a matter of policy to go against the majority Democratic process and require an extraordinary vote, except for extraordinary matters such as the proposal of Constitutional Amendments. I really wish members would think twice about this before voting Yes.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Thank you, very much. Further discussion? Senator Collins. Can we break up the...

SENATOR COLLINS:

Yes...

PRESIDING OFFICER: (SENATOR DEMUZIO)

...conferences and all unauthorized persons please vacate. Senator Collins.

SENATOR COLLINS:

...yes, thank you...thank you, Mr. President and members of the Senate. And I...I agree that...I think we should

break up the conferences because Senator Netsch has stated it adequately. This is a very serious piece of legislation and I don't understand why, you know, after this time, that...that no attention has been paid to this particular piece of legislation and as...as it is, it most certainly will bankrupt this State. It has the potential, if it passes, to bankrupt the State. Specific issues like collective bargaining and other issues pay equity and almost any issue that one would name, as Senator Netsch has stated before, could in fact require an extraordinary majority vote, and I think it is unfair to the citizens of the State of Illinois. Now, if we are going to have the citizens to legislate any problem that...that we find that we cannot solve or come with a rational solution to, and I agree that it has...we have had problems with the Mandate's Acts and the passing of legislation and the careless way that we have acted in many instances, but this is not the way to solve that problem. Now, I would suggest to the sponsors, they are honorable, rational people, that we hold this resolution and that we rethink this problem and come up with a better solution, and I think it can be handled legislatively and it does not have to be in a form of..of...of a referendum.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further discussion? Senator Fawell.

SENATOR FAWELL:

Thank you, Mr. President and members of the...Senate. I rise in...in support of this Constitutional Amendment, although I am not a sponsor of it. I certainly think that it's about time that if we are going to insist that the municipalities and the schools and every other governmental agency do as we command, that we at least ought to have the guts to then come up with the money. It just seems to me that all we've been doing is averting this...this State Mandate's Act, and...and it's about time we started performing the

duties that we were elected to and that is responsible government. I...I rise in support of the amendment and I certainly hope we all will join and vote Yes.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further discussion? Senator Grotberg.

SENATOR GROTBERG:

Thank you, Mr. President, fellow Senators. I rise in support of this Constitutional Amendment No. 98, and I take some issue with the distinguished constitutional attorney from Cook who led off this debate by suggesting that the three-fourths vote is something that should not be required. I would think that the people will determine that when they vote on it in November, that they would want this Body of all Bodies to have a super majority opinion on any matter relating to impacting local government affairs and particularly the economies of local governments. I think it is a very timely amendment and a very timely requirement of the three-fifths majority concept so that we do not go hog wild. It is not unlike the requirements of the proposed balanced budgets amendments that are at the Federal level or the balanced budget that many of us have been trying to put through this Legislature requiring three-fifths or extraordinary votes for extraordinary states of the economy, because you never know what next year will bring to either the State, local or Federal Government. So I think it's timely, the requirements...very much needed, and the passage of it will in fact renew the faith between the local units of government and this General Assembly of the State of Illinois, and I request that my associates vote Aye on something this solid which be a long time coming and may never come up again if we lose.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further discussion? Senator Schuneman. Further discussion? Senator Macdonald.

SENATOR MACDONALD:

I'd like to ask a question of the sponsor, please.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Sponsor indicates he will yield. Senator Macdonald.

SENATOR MACDONALD:

Senator Bloom, I was wondering, I have no quarrel with the problem you were seeking to resolve, but I was wondering why we are seeking to do it through Constitutional Amendment rather than through the Legislature. It is indeed very difficult once we change our Constitution for all time in the future to then reamend the Constitution. I think it will be confusing to the people and I just wondered why you chose this route rather than a route through the legislative process.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator Bloom.

SENATOR BLOOM:

Well, thank you, Senator Macdonald. I'll try and give you the short version in the interest of time. We have been wrestling with this problem for about...eight years, starting back in '77 with the Mandate's Commission. We...we sought a legislative solution and to a degree it worked for a while. The feeling was by those who have studied it was that in those areas where we exercise some supervisory authority it is very easy to get three-fifths of the Legislature to vote on legislation. The concern is with the erosion of the tax base of our school districts and local governments. I would not fully accept the characterization that an amendment of the Constitution is for all time. This merely puts the proposition before the voters. The...one of the prior speakers referred somewhat to frustration, but I...I think that if we have very clear ground rules going in, that it will not impede our ability to exercise supervisory powers, and you have been in the Legislature long enough to know that there are many, many, many bills in which we exercise our oversight

powers or we do correct things, I believe the example was used unemployment compensation. Where they pass with forty, forty-five votes, there should be no problem. It's in those areas that there are sharp differences of opinion, where the bill says if you are going to take sides for one interest group or against another interest group and you pass it with less than thirty-five votes, then, Legislature, you ought to put your money where your mandate is and in the body of the bill come up with the funding. I think that's the best balance we could strike after wrestling with this for seven years. Thank you.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further discussion? Senator Macdonald.

SENATOR MACDONALD:

I appreciate your explanation and I did not mean to indicate that it was for all time, but I will say that if...if we do find down the road that there is some confusion or we have tied our own hands by...by a Constitutional Amendment that it will indeed be rejected by the public. That has been the history in Illinois of Constitutional Convention or Constitutional Amendments. I not only have been here along with you, sir, for twelve years but I also was a delegate to the Constitutional Convention, and we wrestled with all of these matters for many, many long hours, many months. So, that was my interest in asking why we now are wanting to change again. Thank you.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further discussion? Further discussion, for a first time? Senator Netsch, for a second time. Senator Netsch.

SENATOR NETSCH:

Thank you, Mr. President. I understand I...am...excuse me, I am reliably informed that my name was used in debate, and so I will seize the opportunity to call the attention

once again to a point. I think the problem is, and I wish everyone would really look at the absoluteness of the language that is used in this proposed Constitutional Amendment, Senator Macdonald particularly, because I think your point was...that was raised was very good. It does not just apply to the sort of irresponsible major pieces of legislation...that we pass, impose on local governments and clearly should not do; that is, those major pieces of legislation where we totally change the local tax base or tell them they've got to do...take care of the whole hazardous waste problem with millions and millions of dollars of liability and give them no funds to do it. Obviously, that is irresponsible and we ought to be able to control ourselves better than that, but the...the problem is that this Constitution...proposed Constitutional Amendment is written so that it covers anything that remotely affects local government. I would suggest to you again, wherever you were on these issues, that issues like a...an open record said, freedom of information, anything that has the slightest fiscal implication for any unit of local government is going to have to have either the three-fifths vote or the funds up front and, more likely, it is going to be the three-fifths vote. This very dramatically changes the legislative process that all of us, as elected representatives of our constituents, have a responsibility to uphold. We are imposing on ourselves an extraordinary requirement which is very different from our normal working patterns, and I think really we should stop very carefully and consider whether this is consistent with our responsibilities as legislators.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further discussion? Senator Bloom may close.

SENATOR BLOOM:

Alright, thank you, very much. As I said...you all have been contacted by your representatives of local government.

I...I think some of the prior points that have been raised against it really answer themselves. On the one hand, it's been attacked as being over-broad; on the other hand, it's been attacked as not doing the job anyway. We all know that as we exercise our supervisory powers there are...are many instances where our school districts and units of local government are called upon to spend some money; yet, these pass by three-fifths vote because there's a general, broad consensus developing. It is so clear that the tax base of our school districts and our units of local government has...are...has been eroded by certain actions, and...and to a degree what this is saying is that we must impose a little more self-discipline on ourselves. I believe that it is imperative for this Body to show to the public that we believe that we should be acting with the discipline and self-restraint that is necessary and to get this particular resolution over to the House, so that ultimately it can be placed before our constituents so we can hear from them; because I think it's very important that our processes are such that ultimately it is not our decision today whether or not this should be, but we are making the decision on whether we trust our constituents and the voters and the electorate to decide on the form of self-discipline that is necessary. For those reasons, I would urge an Aye vote and thank you very much for your attention.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. The question is, shall Senate Joint Resolution 98 Constitutional Amendment be passed as approved...and approved. Those in favor vote Aye. Those opposed vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 36, the Nays are 14, 3 voting Present. Senate Joint Resolution 98 Constitutional Amendment having received the required three-fifths constitutional majority is

declared passed. Senator Netsch. Senator Netsch has requested a verification. Will all members be in their seats. The Secretary will read the affirmative votes. Secretary hit the wrong button, he will read them slowly. Mr. Secretary.

SECRETARY:

The following voted in the affirmative: Barkhausen, Becker, Bloom, Coffey, Darrow, Davidson, DeAngelis, Donahue, Egan, Etheredge, Fawell, Friedland, Geo-Karis, Grothberg, Hudson, Jeremiah Joyce, Jerome Joyce, Kelly, Kustra, Lemke, Luft, Mahar, Maitland, Nedza, Philip, Rigney, Rupp, Sangmeister, Savickas, Schaffer, Schuneman, Sommer, Watson, Weaver, Welch, Zito.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator Netsch, do you question the presence of any member?

SENATOR NETSCH:

Senator Lemke.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke on the Floor? Senator Lemke is on the Floor.

SENATOR NETSCH:

Senator Sommer.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Sommer, in his seat.

SENATOR NETSCH:

Senator Jeremiah Joyce.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Jeremiah Joyce is in his chair. Do you question the presence of any other member? Alright. On that question, the Ayes are 36, the Nays are 14, 3 voting Present. Senate...Joint Resolution 98 Constitutional Amendment having received the required three-fifths constitutional majority is declared approved. Senator Kelly, for what purpose do you arise?

SENATOR KELLY:

Yeah, Mr. President, I'd like to get leave to change the sponsorship on House Bill 1399 from Kelly to Lemke-Kelly-Egan-Hudson.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. You've heard the request. Is leave granted? Leave is granted. Senator Watson, for what purpose do you arise?

SENATOR WATSON:

Thank you, Mr. President. I'd like to have leave to add Senator Nedza and Senator Philip as hyphenated cosponsors to Senate Bill 1607.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. You've heard the request. Is leave granted? Leave is granted. Senator Lemke, for what purpose do you arise?

SENATOR LENKE:

Purpose of a...a request to change the Six-day Posting Rule and have bills heard in Senate Judiciary tomorrow at two o'clock; four more bills which is Senate Bill 1725, Senate Bill 1754, Senate Bill 1589 and Senate Bill 1645. And anybody else that has any bills in my committee, I suggest you contact me before we leave here so we can waive the rules, but I think this is...the one...only ones that have missed the list.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator Lemke has sought leave to waive the posting requirements on Senate Bills 1725, 1754, Senate Bill 1589, Senate Bill 1645. Is leave granted? Leave is granted. Senator Watson, for what purpose do you arise?

SENATOR WATSON:

Thank you, Mr. President. I'd also like to add Adeline Geo-Karis, Senator Geo-Karis, have leave to add her as hyphenated cosponsor of Senate Bill 1607.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. You've heard the request. Is leave granted? Leave is granted. UPI has requested permission to shoot still photographs. Is leave granted? Leave is granted. Any further business? Alright. Senator Lemke, for what purpose do you arise?

SENATOR LEMKE:

...I have...can I go to the Order of Conference Committees...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator...

SENATOR LEMKE:

...Senate Bill 1399.

PRESIDING OFFICER: (SENATOR DEMUZIO)

...Senator Lemke requests leave to go to page 9, Conference Committee reports, House Bill 1399. Is leave granted? Leave is granted. Okay, Mr. Secretary, on the Order of Conference Committee Reports, page 9, House Bill 1399. Mr. Secretary.

SECRETARY:

Conference...first Conference Committee report on House Bill 1399.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator Lemke.

SENATOR LEMKE:

What this bill does is repeal several sections of the Illinois abortion laws that are no longer enforceable. In these sections that are left on the books they will cause great confusion; nobody will know the sections are enforceable or which...which are not. The bill also makes technical amendments to a number of remaining sections in order to conform the language to those sections to the...to the language of the laws which were upheld by the Supreme Court in June of '83. In addition, it meets objections raised by the district

court in Charles versus Carey, the case involving the Illinois abortion law. The bill contains two new provisions; Section 6(8) that prohibits abortion because the child is not of the desired sex. It does not apply to abortions based on sex-linked generic orders. Section 6(2) tracks the language of the Missouri law requiring that a second doctor be present during late-term abortion. This provision was just upheld by the Supreme Court in the Ashcroft Case. It does not apply if a medical emergency exists with few exceptions such amendments to the reporting requirements and amendments to the definitions. This bill deals with abortions on viable children; those capable of surviving outside the mother's womb. The Supreme Court has said the State has a compelling interest in protecting the unborn...child at the stage of development. This bill simply does what the Supreme Court has said the State may do. Your vote in favor of this bill is necessary to protect the unborn child. I think also...also it takes care of a provision in there regards to the anonymity which is suggested of the minor in case of a parent notification where she seeks court approval for the abortion. This has been taken care of in this bill. I think it's a good bill. I ask for its favorable consideration.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Is there any discussion? Senator Collins.

SENATOR COLLINS:

Question of sponsor.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Collins.

SENATOR COLLINS:

...Senator Lemke, I just received this Conference Committee report, and I...I would like to know, when was it passed out?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

I...I would assume it was passed out today when it was prepared, but it also was, Senator Collins, I'm sure you have read it in the newspapers and I'm sure the ACIU has talked to you about it, and I'm sure you saw a copy of the House Conference Committee.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator Collins.

SENATOR COLLINS:

Oh. Senator Lemke, this is a...a very emotional, important issue and I do know that we have some rules in reference to Conference Committee reports, because it get...provides an opportunity for us to know what's in this piece of legislation. Now, I think it's something like two days or three days or something of that nature, I'm not sure; Senator Netsch I can probably ask or the Parliamentarian in reference to our rules of Conference Committee report, and I do not think the time frame has been met in this one; and for that reason, I ask the sponsor to take this bill out of the record until we have had opportunity to see what's in this Conference Committee report.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

I will assure you, Senator Collins, we have complied with all the rules like we always do on these decisions, because I have...I have been before the Supreme Court, and I never want the General Assembly to be accused of violating its own rules. I've talked to the Senate President, I've talked to the Secretary and everything has been done that complies with the rules of the Senate. I think it's a good bill and I don't think it should be stalled today or tomorrow...or I think it should be heard today, and it should be considered so we don't have to consider it again at the end of Session when

the Governor vetoes it.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Collins.

SENATOR COLLINS:

...I'm asking of...I'm asking a...a question in terms of our rules, and I don't even know when the Conference Committee met or, you know, how...where did this come from, what Conference Committee?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Our...Senator Collins, our rules have been complied with; both the minority and majority have initialed the Conference Committee report. It has been distributed and therefore is before the Body. Senator Collins.

SENATOR COLLINS:

Okay...when...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Collins.

SENATOR COLLINS:

...when did the Conference Committee meet? Question of the sponsor. And I 'd like to know...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright, sponsor indicates he will yield. Senator Lemke.

SENATOR LENKE:

The Conference Committee met I believe on...I think it was Thursday...Wednesday or Thursday, I don't...I don't have the notice before me, but there was a notice sent out to everybody on the Conference Committee and the report was signed.

PRESIDING OFFICER:: (SENATOR DEMUZIO)

Alright. Further discussion?

SENATOR LENKE:

But I'm...this complies with our rules because it complies with the House rules which are...more stringent on Conference Committees. And it was a House bill and was...is

handled by the House by the Representative Pullen and to Representative Madigan's Office, and they have gone through the rules and they have complied with those rules.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Marovitz.

SENATOR MAROVITZ:

Thank you, Mr. President. In Section 2 where you talk about live birth, does that have the same meaning as viability?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Sponsor indicates he will yield. Senator Lenke.

SENATOR LENKE:

That wording was suggested by...in the Supreme Court decisions, so we have added words that have been with the Supreme Court decision.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Marovitz.

SENATOR MAROVITZ:

Does the term "live birth" have the same meaning as viability?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lenke.

SENATOR LENKE:

I would assume not, because the Supreme Court has talked about viability and live birth in their decision, so I would assume...I'm only assuming what the Supreme Court whenever they set up new words they mean it's something different.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Marovitz.

SENATOR LENKE:

It might not...

SENATOR MAROVITZ:

Well, I think live birth different than viability includes fetuses born with minimal life signs, and when you

read this section in connection with Section 6, which you have to do with the homicide provisions, the possibility arises then that a physician can be prosecuted for murder if he fails to act on behalf of a nonviable fetus. Would that be correct?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

Talking about...ectopic pregnancies which are...and with the...if you look at Section 6, it requires a doctor who performs an abortion to remove...an ectopic pregnancy at...say eight weeks be liable for homicide, but what...there is nothing that can be done to save the child at this stage of development and although the abortion was intentional that that would follow was not; therefore, the Criminal Code would not apply. That's what this section does, according to the Supreme Court rules.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Marovitz.

SENATOR MAROVITZ:

In Section 6(7), the human being is referred to there. Has...have...has this term been ruled on by the...by the court in the Charles versus Carey decision? Was it ruled unconstitutional? 6(7).

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

Not to my knowledge; not to my legal opinion either.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further...further...further discussion? Senator Marovitz.

SENATOR MAROVITZ:

Take...take a look at the Charles versus Carey case, because I think that would void this entire section. One of

the problems with dealing with such an important subject matter as this in a fashion that we have not had a chance to look at it and examine it is that once again, as has happened all too often and...and as many of us have stood up on this floor and said would happen, we will be passing something that will be ruled unconstitutional once again by the...highest court in the State of Illinois. This has happened time and time again; it's going to happen here again. Perhaps if we had time to look at this thing, at the very least a bill would be passed that would be constitutional. This is not the case in...in the bill that we're taking a look at here, and I dare say that very few of you have had a chance to really examine this piece of legislation that comes before us today for final passage and is probably one of the most important pieces of legislation in terms of ramifications that we will take up this entire Session. Obviously, it's going to pass; I think the train is leaving and everybody knows it, but I think everybody ought to have a chance to take a look at it and really take a look at what the ramifications are. We're dealing with an unconstitutional piece of legislation, and I really think that we ought to...we ought to be ashamed of ourselves for continuing to pass legislation which is struck down by the Supreme Court of Illinois.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Jones.

SENATOR JONES:

Yes, thank you, Mr. President. I have the Conference Committee report in front of me, and on the last page where the signatures are, it says, "All of which is respectfully submitted this," there is no date as to when this Conference Committee report was submitted, so I implore you, Mr. President, to check with the Parliamentarian. I don't believe this Conference Committee report is in good form. Now, if our

rules permit Conference Committee report to be submitted at any time without a date on it, I'd like a ruling on that point, because there is no date whatsoever on there.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator, there...there...there are no rules in the Senate that require a date to be attached to the Conference Committee report. It in fact has been distributed; therefore, it is in fact before the Body.

SENATOR JONES:

Well, perhaps it's not in the rule, Mr. President, so therefore you can't rule on what's not in the rule, but I thought that date was in there for a particular purpose; and since it was filed, I believe one should know what date it was filed and when, and the sponsor doesn't know when it was filed and so forth but it's...it's very sad.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Fawell.

SENATOR FAWELL:

Thank you, Mr. President. Question of the sponsor.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Fawell.

SENATOR FAWELL:

Since I'm not an attorney, I...I've been looking over this bill and I noticed this...several places that a doctor can be accused of a Class 3 or a Class...a Class 3 felony or a Class 2 felony. Can you tell me, what are the consequences of being found guilty of a Class 2 or a Class 3 felony? Are we talking about putting doctors in jail?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

If you would read the...carefully this...those terms are what the courts have said in...in other cases that they held constitutional, and if you're looking at Section 7, 8,

and...Section 7, 8 and 9, those sections have been repealed by this bill and then...in compliments to Senator Marovitz, that section she was talking about has been repealed. What we're talking about...the only...the...the cases are on point, it's true that if somebody violates the Illinois law, they are giving sentences. In certain circumstances those sentences are harsher than others, and if a child is born alive and has a...potential of living eight weeks after it was born, then by taking the life of that child, I would assume that it follows the Criminal Code and that penalty is stiffer. If prior to that time it is not, the courts have said that the doctor can't be held and that's what this bill does.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Fawell.

SENATOR FAWELL:

I'm looking particularly at Section 3.1, where it says, "Any person who intentionally or knowingly performs an abortion contrary to the requirements in Section 3.1 commits a Class 2 felony." I mean, what is the penalty for a Class 2 felony? That's what I'm asking. I honestly don't know.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

Which part in 3.1 are you looking at, A or B?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Fawell.

SENATOR LEMKE:

...if you're looking at B, that section has been eliminated then deleted from the bill by the Supreme Court decision.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Fawell.

SENATOR FAWELL:

This is on page 3, Section 3.1...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR FAWELL:

...and...and in line 18.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Whoops, Senator...Senator Fawelll. Senator Lemke.

SENATOR LEMKE:

Commits a Class 2 felony, that's what's in our present Act. It doesn't change it, that's what's in our Act right now. Anything that's been changed...the only thing that's been changed in there is to...to word the Section 3.1; it used to be called 3.A and 3.B. Part B of Section 3.1 has been deleted and therefore the only change in there is Section 3.1. This does not change our present law which has...have been held...held constitutional by the court. All it does is...change the numbering.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Fawell.

SENATOR FAWELL;

No, I'm sorry, you're adding...you're adding Section B, according to what I've got. On line 12, it is not struck out, it is added.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator Lemke.

SENATOR LEMKE:

We're deleting B, which says, "He receives a written statement of all communication by another physician." The only part on line 12 are the words "is necessary," which refers to abortion on line 11 "is necessary." Section 1 will read as follows: "Medical Judgment. No abortion shall be performed except by a physician after either," and that is stricken, "he determines that, in the best clinical judgement, the abortion is necessary."

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Senator Fawell.

SENATOR FAWELL:

I'm ...I'm sorry, but you better...you better look at my copy, because according to my copy, you are adding that...I whether...I...maybe I have a...maybe I have a bad copy, but I'm just telling you that everybody around here agrees with me. This is added language. I mean, how many other places in here have we done that where the bill is not in proper form? You know, why don't you let us have a chance to look at this and double-check it, because what we've got is added...is added...I'm sorry, Senator, but it is added over here.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Alright. Further discussion? Senator Geo-Karis. Senator Geo-Karis.

SENATOR GEO-KARIS:

Mr. President, Ladies and Gentlemen of the Senate, God knows I'm up against abortion, but I hope that the sponsor will take this bill out of the record, because right in this bill exactly what...Senator...Fawell says is in the bill not out of the bill, and I think we better be very careful when we're going to pass medical judgment and charge a doctor with a Class 2 felony which is three to seven years, and...going to this bill, because it's putting together some of these provisions. I can't buy them and I would like to be able to vote for this Conference report if it is looked into more carefully and I think some revisions be made. I cannot support this Conference report the way it's written now. You have felonies all over the place where...substituted for judgments.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Grotberg.

SENATOR GROTEBERG:

Thank you, Mr. President. I have a question for the

sponsor.

PRESIDING OFFICER: (SENATOR GROTEBERG)

Indicates he will yield. Senator Groteberg.

SENATOR GROTEBERG:

Senator, in...for the record, I have consistently supported strengthening this Act and most of your legislation. My concern has always been that my wife, my daughters, my granddaughters or your wife, daughters or granddaughters would go to prison for getting involved in this process. My question to you then, Mr. Sponsor, as the bill would read with this amendment are we only penalizing the medical profession or are we potentially penalizing...subjecting to prison sentence all who participate including the expectant mother?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

In this particular section refers to medical judgment in...and applies to medical profession and those that aid and abet a doctor to commit a crime, whether it be abortion or what it is, I would assume would be possibility being tried as a...as a accomplice, but this section does not apply to those people; other parts in the bill, the bill we passed last time, apply and that is held...been held...held constitutional. What we're doing here with the language is eliminating the unconstitutional language and putting in the language of the Supreme Court. In other words, this is the language they want us to...apply for fairness towards doctors. This is what they have...have put in...this bill is...is...is in that language is in conformity to what the Supreme Court has said in the cases at hand.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Further discussion for a first time?
Senator Kelly.

SENATOR KELLY:

Just briefly, Mr. President. I'd rise to support the Conference Committee report. This is certainly a...a much more...watered down version of the initial bill which came before this Body and...and this issue and...these are all matters within these sections that have conformed with the Supreme Court's decision...recently, and I...if anything, this is...legislation every pro-life person that votes for pro-life legislation should be in strong support of. So I'd call on you to vote Yes on this Conference Committee report.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, further discussion? Senator Marovitz.

SENATOR MAROVITZ:

Well, I...I would suggest that perhaps for the first time in...in our legislative procedure we do something that makes a little sense here and that is take a look at the Supreme Court rulings that we've been hearing so much about and hear about every time these abortion bills come up we hear, well, this complies with the Supreme Court rule, this applies with this case, and we all know it doesn't; it goes to the Supreme Court, it doesn't comply, it comes back to us, it's found unconstitutional. Let's take the bill out of the record, take a look at the Supreme Court cases. You know you've got the votes to pass any antiabortion bill you want here, but let's pass one that's constitutional if you're going to pass one. Take a look at the Supreme Court rules. Take a look at the penalties that you...you ledger out of the bill but are, in fact, in the bill and are...and are going to put these doctors away. Let's take a look at this thing and make it...and make it something that, at least, those of you who are going to vote for it are proud of. Take it out of the record. You're going to pass the bill when it comes up anyway.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

Excuse me for speaking a second time, but for the first time in a long time I concur with the remarks of Senator...Marovitz. I would like to see the Supreme Court decisions before we vote on this bill 'cause if it is deemed...unconstitutional again, we're going to spend a lot of money, hundreds of thousands of dollars of taxpayers' money on this bill for lawsuits. Now, I am for pro-life, but I want to have a conscience I can live with. I ask the sponsor respectively to take it out of the record and produce a Supreme Court decisions on cases of this nature, and I cannot vote for this bill...this Conference Committee report, otherwise.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Collins, for a second time. Senator Collins.

SENATOR COLLINS:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Collins.

SENATOR COLLINS:

Okay, on page 13, line 34 through 14, line 2, ending at Class 3. Would you just read that and tell us what you mean...what...what does it mean?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

Senator Collins, that language has been upheld constitutional. This does not change it at all. All it does...if you notice in reading that, it changes...it puts Section 3 and eliminates Section D...subsection. That...that...that provision has been upheld by the courts. That is not added. That is not new language. That has been...that's been...that

is language that is in our existing Act. Whether we pass this bill or not, that language will apply.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Collins.

SENATOR COLLINS:

The problem with it...the language, while it may be constitutional or already upheld, but in the context of this...whatever this is, I can't see how in the world that this bill can be constitutional, because by assuming that this...that this language is in fact constitutional, if you would read it, then anyone...anyone would probably...any druggist, any store, any place would be guilty of a Class 3 felony that sold a knife to someone that was pregnant and they used that knife or could have...could use that knife. It doesn't say for an abortion. Well, in the confines of this bill, then they can go...they can go...go...go to jail.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Collins. Senator Collins, have...have you concluded?

SENATOR COLLINS:

Well, the only thing I can say would...you know, that I cannot support the bill, Senator Lenke. I would like to have an opportunity to look at it and to have some input into it, and as much as that you don't want that, I'm asking the members of this Body to reject this bill because it most certainly, probably will be held unconstitutional and it's a very dangerous act.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Lenke may close.

SENATOR LEMKE:

Just in commenting, I think this is a good bill. Having been to the Supreme Court and...and in arguing these cases and have worked on these cases, I will assure you, any language that has not been changed has been held constitutional.

Any language that has been inserted in there is constitutional under the case. The only new language we have got into is regards to the sex change; in other words, have an abortion just for the reason that you don't want a girl or a boy baby and it's...it's in complete compliance. I think that all I can comment on is very simple. Knowing the Supreme Court and their whims and their wishes, I can't do...I can only do what I think as a lawyer and as a legislator think is constitutional. Edmund Burke said that, "All that is necessary for the forces of evil to win in the world is for enough good men and women to do nothing," and I close with that.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

All right, the question is, shall the Senate adopt the first Conference Committee report on House Bill 1399. Those in favor vote Aye. Those opposed vote Nay. The voting is open. All right, the voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 34, the Nays are 14, 5 voting Present. The Senate does adopt the Conference Committee report...first Conference Committee report on House Bill 1399 and having received the required constitutional majority is declared passed. For what purpose does Senator Rock arise?

SENATOR ROCK:

Thank you, Mr. President. We have a pretty heavy committee schedule for this afternoon and we have committees tomorrow morning and again tomorrow afternoon. I would suggest that we now adjourn until the hour of one o'clock on Tuesday, May 1. One o'clock tomorrow. That will afford, I hope, the opportunity for the members to attend the committees in the morning, get some lunch and be ready to go for the afternoon which, again, is very heavy, but we...if there are no further announcements or further business, I would move we stand

adjourned till one o'clock tomorrow.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Carroll.

SENATOR CARROLL:

Thank you, Mr. President. A reminder to the members of the Appropriations Committee, we will meet immediately upon adjournment in Room 212. Immediately upon adjournment. Thank you.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President. Elementary and Secondary Education will meet in Room 400 in ten minutes. Quarter to three in Room 400.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator D'Arco.

SENATOR D'ARCO:

Thank you, Mr. President. The Insurance Committee will meet in Room A-1, the Stratton Building, immediately upon adjournment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further business to come before the Senate? Senator Rock moves that the Senate stand adjourned till Tuesday, May 1st, at one o'clock. Those in favor will signify by saying Aye. Opposed Nay. The Ayes have it. The Senate stands adjourned.